



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 27, 1996

Mr. Jay Granberry  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR96-1769

Dear Mr. Granberry:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100924.

The City of Bryan (the "city") received two requests for information. You inform us that the city has released some of the requested information. However, the city asserts that portions of the requested information are excepted from required public disclosure based on sections 552.101 and 552.117 of the Government Code.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy, if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

As applied to financial information, the protection of common-law privacy extends to information that reveals a personal financial decision that does not involve a transaction with a governmental body. *See Open Records Decision No. 600 (1992)*. We agree that section 552.101 in conjunction with the common-law right to privacy excepts from required public disclosure certain financial information, including information that identifies beneficiaries of insurance or retirement, forms showing an employee's decision to participate in a deferred compensation plan, forms showing an employee's donation to a charity, forms revealing a bank account number and direct deposit authorization forms. *See id.* Common-

law privacy does not protect the name of a person an employee wants to be notified in case of an emergency as that information does not reflect a personal financial decision. However, the name of a beneficiary may be excepted from disclosure under Government Code section 552.117, which we will discuss at the conclusion of this letter.

We also agree that the common-law right to privacy protects from public disclosure information that identifies a victim of sexual assault. *See* Open Records Decision No. 339 (1982). If the information that identifies a person who reports a sexual assault would tend to identify the victim, that information is likewise excepted from disclosure pursuant to section 552.101. We do not believe the victim's right to privacy is implicated by the release of nonidentifying information. Furthermore, we do not believe common-law privacy protects from disclosure the name of a suspect of a sexual assault as the public has a legitimate interest in knowing the suspect's identity.

Section 552.101 also applies to information made confidential by statutory law. Title 26, section 6103(a), of the United States Code renders tax return information confidential. Consequently, the city must withhold from disclosure the Internal Revenue Service forms.

The information also contains medical records. The release of these records is governed by the Medical Practice Act, V.T.C.S. article 4495b, section 5.08.

You also suggest that the investigative records may contain suspects' criminal history record information. If there is such information in the documents you submitted to this office, we remind you that title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any criminal history record information generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565. Furthermore, any criminal history record information obtained from DPS or any other criminal justice agency must be

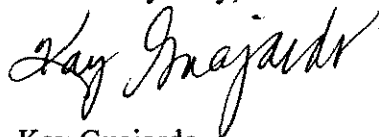
withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed.

Finally, section 552.117 of the Government Code excepts from public disclosure the home address, home telephone number, social security number and information about family members of a current or former official or employee of a governmental body who has complied with section 552.024 of the Government Code and a peace officer as defined by Article 2.12 of the Code of Criminal Procedure. Section 552.024 provides a procedure by which an employee or official of a governmental body may choose whether to allow public access to the information covered by section 552.117. Thus, if at the time the city received the request for information the employee or official chose to keep the section 552.117 information confidential, the city must not release this information. We note, however, that the election of one of the employees did not include information about family members or social security numbers. Thus, the city may not withhold from public disclosure based on section 552.117 that employee's social security number and information about family members.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 100924

Enclosures: Submitted documents

cc: Ms. Carolyn Jaska  
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(w/o enclosures)